

Federal Maritime Commission

§ 514.1

§ 510.26 Regulated Persons Index.

The Regulated Persons Index is a database containing the names, addresses, phone/fax numbers and bonding information, where applicable, of Commission-regulated entities. The database may be purchased for \$84 by contacting BTCL, Federal Maritime Commission, Washington, DC 20573. Contact information is listed on the Commission's website at www.fmc.gov.

[63 FR 50536, Sept. 22, 1998]

EFFECTIVE DATE NOTE: At 63 FR 50536, Sept. 22, 1998, § 510.26 was added, effective Nov. 2, 1998.

§ 510.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this part comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB Control No.
510.12 (Form FMC-18)	3072-0018
510.14	3072-0018
510.15	3072-0018
510.19 (Form FMC-18)	3072-0018
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PART 514—TARIFFS AND SERVICE CONTRACTS

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514.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

EXHIBIT 1 TO PART 514—ATFI USER REGISTRATION FORM

EXHIBIT II TO PART 514—SAMPLE ABBREVIATED FORMAT SERVICE CONTRACT

AUTHORITY: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814-817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702-1712, 1714-1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101-92, 103 Stat. 601.

SOURCE: 57 FR 36271, Aug. 12, 1992, unless otherwise noted.

Subpart A—General Provisions

§ 514.1 Scope, purpose, requirements, penalties and fees.

(a) *Scope.* The regulations of this part govern:

(1) The publication and filing of tariffs, as well as service contracts and their essential terms, covering the transportation of property performed by common carriers in the foreign commerce of the United States and by combinations of such common carriers, including through transportation offered in conjunction with one or more carriers not otherwise subject to the Shipping Act of 1984 (46 U.S.C. app. 1702, et seq.).

(2) The publication, filing, and posting of tariffs for the transportation of property or passengers performed by common carriers by water in interstate commerce which are subject to the Shipping Act, 1916, as amended (46 U.S.C. app. 801, et seq.), including

through transportation offered in conjunction with one or more common carriers not subject to said Shipping Act.

(3) The filing of terminal tariffs by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities within the United States or a commonwealth, territory, or possession thereof, in connection with a common carrier by water in the foreign or domestic offshore commerce of the United States.

(4) The filing of tariffs by terminal barge operators in Pacific Slope States in the foreign and domestic commerce of the United States. See § 514.3(a)(7).

(5) The formatting of tariff materials for electronic filing, processing and retrieval.

(b) *Purpose.* The tariff format and content requirements of this part reflect the Commission's responsibilities in identifying and preventing unreasonable preference or prejudice and unjust discrimination pursuant to section 10 of the Shipping Act of 1984. The purposes of this part are also to enable the Commission to:

(1) Discharge its responsibilities under section 17 of the Shipping Act, 1916 and section 10 of the Shipping Act of 1984, by keeping informed of practices, rates and charges related thereto, instituted and to be instituted by marine terminals, and by keeping the public informed of such practices.

(2) Determine, through the use of information obtained under this part, the propriety of the level of rates, fares, charges, and practices demanded, charged, collected or observed by carriers in the domestic offshore commerce of the United States under the Shipping Act, 1916, as amended by the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, et seq.).

(3) Facilitate, by electronic means, the filing, processing and retrieval of tariff materials to better promote the waterborne commerce of the United States.

(c) *Basic requirements.* Unless exempted or excluded under § 514.3, and as augmented by § 514.8(k)(1), the following are the basic requirements under this part:

(1) *Foreign commerce of the United States.* (i) Section 8 of the Shipping Act of 1984 requires common carriers and conferences of such common carriers to file with the Commission and keep open to public inspection, tariffs showing all rates, charges, classifications, Tariff Rules and practices for transportation between U.S. and foreign ports and between points on any through route which is established. These regulations implement this requirement and, in addition, the requirements of sections 9, 10 and 16 of the Shipping Act of 1984.

(ii) Service contracts and their essential terms are also required to be filed by the 1984 Act and shall apply only to transportation of cargo moving from, to or through a United States port in the foreign commerce of the United States.

(iii) *Anti-rebate certification.* (A) An anti-rebating certification shall be filed in paper format, as prescribed by part 582 of this chapter, by every common carrier in foreign commerce as a prerequisite to obtaining password authority to file its initial tariff under this part, and thereafter, on each succeeding December 31 of an even-numbered calendar year. Except for the initial certification, the certification filed on each succeeding December 31 of an even-numbered calendar year shall be valid for the two calendar years following the December 31 filing date.

(B) Failure of a common carrier to file an anti-rebate certification before filing initial tariffs, as required by this part and part 582 of this chapter, shall result in withholding or suspension of any filing authorization and rejection of that carrier's proposed tariff(s).

(C) Any common carrier who fails to file an anti-rebate certification as required by part 582 of this chapter will be notified by FEDERAL REGISTER publication and by certified mail that if, within forty-five (45) days from the date the certified notice is mailed, the common carrier does not either establish that the required anti-rebate certification was filed in accordance with this part and part 582 of this chapter, or file the required anti-rebate certification, its tariff(s) will be cancelled and attempted filings rejected.

(D) In the event common carrier rates are published in one or more conference tariffs, the name of every common carrier who did not file an anti-rebate certification will be stricken from the list of carriers participating in those conference tariffs.

(E) The tariff(s) of any common carrier who files an anti-rebate certification after December 31 but before the end of the forty-five (45) days' notice period will not be canceled; however, the common carrier will be subject to civil penalties as provided in parts 502 and 582 of this chapter. The tariff(s) of any common carrier who files an anti-rebate certification after December 31 but before the end of the forty-five (45) days' notice period will not be canceled; however, the common carrier will be subject to civil penalties as provided in parts 505 and 582 of this chapter. After the forty-five (45) days, any common carrier that does not have an anti-rebate certification on file with the Commission will be notified by FEDERAL REGISTER publication and certified mail, return receipt requested, that its tariff(s) have been canceled and/or its name has been stricken from conference tariff(s).

(2) *Domestic offshore commerce of the United States under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933.* (i) Every domestic offshore carrier shall file with the Commission and keep open to public inspection, tariffs showing its actual rates, fares and charges for or in connection with transportation between all points on its own route, and all points on any through route established in conjunction with other carriers. Such tariffs shall plainly show the places between which freight and passengers will be carried and shall contain any classification of freight and passenger accommodations affecting or determining the rates applicable to such transportation and shall state separately each terminal or other charge, privilege, or facility granted or allowed to shippers or passengers and any Tariff Rules or regulations which in anywise change, affect, or determine any part of the total rates, fares or charges assessed or the value of service rendered to consignors, consignees or passengers.

(ii) Only tariffs of persons engaged in common carriage by water may be filed. Common carriers subject to the Shipping Act, 1916, are those vessel operating and non-vessel-operating carriers providing transportation by water between:

(A) Any of the 48 contiguous states or the District of Columbia and Alaska or Hawaii;

(B) Any state or the District of Columbia and any territory, commonwealth, possession or district (excluding the District of Columbia);

(C) Alaska and Hawaii;

(D) Any territory, commonwealth, possession or district (excluding the District of Columbia) and any other such territory, commonwealth, possession, or district; and

(E) Places in the same district, territory, commonwealth or possession (excluding the District of Columbia), and which are not solely engaged in transportation subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. Chapter 105.

(3) *Both foreign and domestic offshore commerce—(i) Terminal operators.* (A) Every person carrying on the business of furnishing wharfage, dock, warehouse, or other terminal facilities as described in paragraph (a)(3) of this section, including, but not limited to terminals owned or operated by States and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities, shall file, and shall keep open for inspection at all their places of business, a schedule or tariff showing all their rates, charges, Tariff Rules, and regulations relating to or connected with the receiving, handling, storing, and/or delivering of property at their terminal facilities,

(B) Every tariff or tariff change shall be filed on or before its effective date, except as required by Commission Order or by agreements approved pursuant to section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984, and be kept open for public inspection as provided in paragraph (c)(3)(i)(A) of this section.

(C) Persons who file tariffs pursuant to requirements of Commission Orders or agreements, approved under section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984, are not relieved of such requirements by this part.

(ii) [Reserved]

(4) *Electronic filing.* All tariffs filed under this part shall be properly formatted as provided in this part and in the ATFI “Batch Filing Guide,” under § 514.8(c)(3).

(d) *Rejection of tariff data.* (1) Acceptance of tariff matter does not establish the legality of the rates and practices described therein. The mere filing of a tariff does not excuse the tariff owner or publisher from the obligations of the 1984 Act or this chapter, regardless of whether these obligations preceded or followed the filing of the tariff in question.

(2) Any tariff matter submitted for filing, including service contracts and their essential terms, which fails in any respect to conform with the applicable shipping statutes, with the provisions of this part, or with a Commission Order, is subject to rejection or partial rejection after filing.

(3) Notices of rejection, with reasons therefor, will be made available to filers through electronic mail and, if not accessed by the filer within a certain period of time, will be sent by regular U.S. mail. For service contracts and/or essential terms, the Commission may also notify the filing party of the Commission’s intent to reject within 20 days of filing. See § 514.7(g). (Note: There will be no notice of rejection for attempted filings which are not accepted into the system because they are not syntactically correct for processing.)

(4) Upon rejection, rejected tariff matter is void and its use is unlawful.

(5) After rejection, the filer is responsible for putting its tariff in order. See § 514.9(b)(19)(iv).

(6) The “Status” function on many ATFI screens displays a pop-up window that shows the status of a filed tariff item, including a code that identifies whether it was accepted or rejected, a description of the code, and comments entered by an FMC Examiner regarding a rejected item.

(e) *Penalties; suspension of tariff material.* (1) Operating without an effective tariff on file with the Commission or charging rates not in conformance with such a tariff is unlawful.

(2) Foreign commerce. Pursuant to section 13 of the Shipping Act of 1984, operating without an effective tariff on file or charging rates not in conformance with such a tariff is subject to a civil penalty of not more than \$5,000 for each violation unless the violation was willfully and knowingly committed, in which case the amount of civil penalty may not exceed \$25,000 for each violation. Each day of a continuing violation constitutes a separate offense. Additionally, the Commission may suspend any or all tariffs of the common carrier, or that common carrier’s right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months. See § 514.19.

(3) Domestic offshore commerce. (i) The Commission may at any time direct the cancellation of tariff matter which does not conform to the 1916 Act or this part. See § 514.19.

(ii) Violations of the provisions of this part are subject to a civil penalty of not more than \$1,000 for each day such violation continues.

(f) *Filing fee.* Under the authority of the Independent Offices Appropriation Act, 31 U.S.C. 9701, the Commission assesses a filing fee for ATFI filings. See § 514.21(i) for filing fees.

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 39623, Sept. 1, 1992; 59 FR 63908, Dec. 12, 1994; 60 FR 27229, May 23, 1995; 61 FR 66617, Dec. 18, 1996]

§ 514.2 Definitions.

The following definitions (in alphabetical order) shall apply to the regulations of this part and to all tariffs and service contracts filed pursuant to them, unless otherwise indicated by the context of this part.

Across-the-board increase (domestic offshore commerce) means any change in rates, fares, or charges in domestic offshore commerce which will: (1) Result in an increase in not less than 50 percent of the total rate, fare or charge items in the tariffs per trade of any carrier, and (2) directly result in an increase in gross revenues of said carrier